

United States  
Circuit Court of Appeals

For the Ninth Circuit.

LEE GET NUEY,

Appellant,

vs.

JOHN D. NAGLE, Commissioner of Immigration  
for the Port of San Francisco,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.

FILED

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PAUL F. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

For Petitioner and Appellant:

RUSSELL P. TYLER, Esq., Kohl Bldg., San  
Francisco, California.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Fran-  
cisco, Calif.

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In the Southern Division of the United States Dis-  
trict Court, in and for the Northern District of  
California, Second Division.

20,397-S.

In the Matter of the Application of LEE SHARE  
DEW for a Writ of Habeas Corpus for and  
on Behalf of His Son LEE GET NUEY, Ex  
SS. "PRESIDENT GRANT" 7/9/30.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable Judges of the District Court of  
the United States, Now Sitting in the Above  
Division of Said Court:

Now comes Lee Share Dew, the petitioner in the  
above-entitled proceeding, filing herein his petition  
for a writ of habeas corpus for and on behalf of  
his son, Lee Get Nuey, and respectfully shows:

I.

That your petitioner, Lee Share Dew, was born

in the United States of America and is a citizen thereof and is now a resident of the City and County of San Francisco, State and Northern District of California.

## II.

That Lee Get Nuey, hereinafter, for the sake of brevity, referred to as the "detained person," and the person in whose behalf this petition is made, is the lawful and legitimate son of your petitioner and as such the said detained person is a citizen of the United States of America.

## III.

That the said detained person is unlawfully imprisoned, [1\*] detained, confined and restrained of his liberty by John D. Nagle, Esq., Commissioner of Immigration, at the Port of San Francisco, at the Immigrant Station of the United States, at Angel Island, California, or at some other place in the said Northern District of California, and that said detained person is about to be deported from the United States to China, to wit: on the "President Jackson," on or about the 24th day of October, 1930.

## IV.

That the illegality of such imprisonment, restraint, detention and confinement, consists in this, to wit:

That said detained person made application to be admitted to the United States at the Port of San Francisco on or about the 9th day of July, 1930, as

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\*Page-number appearing at the foot of page of original certified Transcript of Record.



a citizen of the United States and as the lawful, legitimate son of your petitioner.

That subsequent to the said application to be admitted to the United States by the said detained person, as aforesaid, said detained person was denied and refused a fair hearing in good faith by the Secretary of Labor of the Government of the United States by a manifest abuse of discretion vested in him by law, and through error and mistake of law and against the spirit of the law and was denied his right to enter the United States, and in this respect your petitioner alleges:

(a) That said detained person arrived on or about the 9th day of July, 1930, on the steamship "President Grant" at the Port of San Francisco from China and made application to the Commissioner of Immigration at the port of San Francisco for admission to the United States as a citizen thereof and as the lawful, legitimate son of your petitioner.

(b) That thereafter, in pursuance to the rules and regulations of said Department, the said detained person was given a hearing before the proper immigration authorities touching his [2] right to enter the United States as a citizen thereof and as the lawful, legitimate son of your petitioner, and at such hearing and other hearings subsequent thereto testimony and documentary evidence was submitted on behalf of said applicant before said immigration officers touching his right to enter the United States, and at such hearing testimony was introduced and submitted bearing upon the legality

of the claims of said detained person and of the relationship existing between the said detained person and your petitioner, and at said hearing and other hearings subsequent thereto testimony and documentary evidence was submitted and introduced bearing upon the citizenship of your petitioner, and that thereafter the said commissioner found that the said applicant was not the son of your petitioner and was not a citizen of the United States by reason of the said relationship to your petitioner; that thereafter the said application for admission to the United States by the said detained person was denied by the said Commissioner of Immigration.

(c) That subsequent to the action by the said Commissioner of Immigration at the Port of San Francisco and denying the said application of the said detained person for admission to the United States as a citizen and lawful legitimate son of your petitioner, as aforesaid, the said detained person regularly appealed to the Secretary of Labor from said decision, and subsequent to the taking of said appeal, as aforesaid, the said Secretary of Labor denied the said appeal from the said decision of the said Commissioner of Immigration of the said Port of San Francisco, as aforesaid; that the facts relied upon in the said appeal to the said Secretary of Labor from the decision of the said Commissioner of Immigration at the Port of San Francisco, as aforesaid, consisted in this, to wit: That the said detained person was denied admission into the United States by the said Commissioner of [3]

Immigration at the Port of San Francisco, for the reason that said Commissioner as a result of said investigation, as aforesaid, was not satisfied from the testimony and the record that the said claims made by said detained person were true and that the said detained person was the lawful son of your petitioner and as such, a citizen of the United States.

(d) That the detained person has been and is denied a fair hearing in good faith, such as guaranteed to a citizen of the United States and in this respect your petitioner alleges that the Bureau of Immigration and the Secretary of Labor were unduly prejudiced by certain discrepancies in said record and particularly prejudiced against your petitioner by reason of the fact that in 1924 your petitioner gave the birth year of applicant as 1901 and on his return from China in 1925 gave the birth year as 1902 and further because of certain statements made by petitioner in 1924 regarding the children of applicant, and in this respect petitioner alleges that said record relied upon by the Bureau of Immigration and the Secretary of Labor is not clear and incomplete and that the said Bureau of Immigration and the Secretary of Labor have been further prejudiced by reason of certain alleged discrepancies in the testimony of applicant concerning a description of his home village in China, a statement concerning the school which he attended in China and certain testimony relative to members of the family of the said petitioner, all of which said testimony is not subject to any discrepancies

but is susceptible to be interpreted in substantial accord with the testimony of said applicant and other witnesses, and in this respect your petitioner alleges that all statements of said detained person, your petitioner and all other witnesses examined by the said Commissioner of Immigration at the Port of San Francisco, as aforesaid, together with all written and documentary evidence is in substantial accord and [4] establishes without variance or contradiction that the said detained person is the lawful, legitimate son of your said petitioner and as such is a citizen of the United States of America.

(e) That the report of the Immigration Inspector is not made a part of this petition for the reason that said report is classified in the Immigration Service as a privileged communication between the Immigration officials, and your petitioner is not permitted to see a copy of said communication or to procure a copy of the same for the purpose of attaching the same to this petition.

(f) That the Commissioner of Immigration and the Secretary of Labor have manifestly committed an abuse of discretion in the said cause against the said detained person in that all of the said alleged discrepancies in the said testimony adduced in the cause of the said detained person aforesaid, could not have been made the determining factor in denying his application to enter the United States, same being irrelevant and immaterial evidence, since the question for determination in said hearing was the relationship between the said detained person and



your said petitioner; that the evidence contained in the report and by all evidence both oral and documentary considered by the said Commissioner of Immigration and said Secretary of Labor, as aforesaid, proves conclusively and without contradiction that the said detained person is the son of your petitioner and that your petitioner is a citizen of the United States of America and that by reason of the relationship of said detained person to your said petitioner, the said detained person is a citizen of the United States of America.

(g) That the said Commissioner of Immigration and said Secretary of Labor committed an abuse of discretion in refusing the said detained person entry into the United States for the reasons herein alleged, it manifestly appearing from an examination of the said record, as aforesaid, that the said relationship between [5] the said detained person and your said petitioner is established without question and beyond contradiction by said evidence considered in behalf of the said detained person, as aforesaid.

(h) That your petitioner further alleges that the said record in the case of said detained person clearly establishes that said detained person was refused and denied a full and fair semblance of a full and fair hearing before the said Commissioner of Immigration at Angel Island, State and Northern District of California, and the Secretary of Labor, and that the denial of the appeal in said cause and the refusal to permit the said detained person to enter the United States was and is a mani-

fest abuse of discretion imposed by law in the said Commissioner of Immigration and the said Secretary of Labor and that the said ruling and rulings were, and each of said rulings was based upon error and mistakes in law and fact and against the spirit and letter of the law.

#### V.

That the proceedings so had from the time of the application of the said detained person to be admitted into the United States, up to and including the order of the said Secretary of Labor denying and dismissing the said appeal from the said decision of the said Commissioner of Immigration at the Port of San Francisco, as aforesaid, and directing the said Commissioner of Immigration to deport the said detained person to China, as aforesaid, and all orders, investigations, findings and recommendations of the said Commissioner of Immigration and said Secretary of Labor of the said Government of the United States, and all papers, documents and proceedings in said matter in the application of said detained person for admission into the United States, including all evidentiary matter consisting of former statements made by any and all witnesses, and all statements previously made by any or all [6] persons touching upon the relationship of the said detained person to your petitioner are, as your petitioner is informed and believes, and therefore upon such information and belief alleges, incorporated in the record of said detained person, for admission into the United States, as aforesaid, and are now in the possession of and subject to the con-

trol of the Secretary of Labor and all of which has been and now are inaccessible to your petitioner and that said detained person and your petitioner have been unable to obtain copies, or access thereto, and for said reason your petitioner is unable to accompany this petition with a copy of said record; that when said proceedings so had in regard and in respect to the said application of said detained person, as aforesaid, are available and are procured from said Commissioner of Immigration and the said Secretary of Labor, affiant requests that they be made a part hereof as fully as if a copy thereof was attached hereto at the time of the filing hereof.

#### VI.

That the said detained person has exhausted all rights and remedies and has no further remedy before said Department of Labor and that unless a writ of habeas corpus issue out of this court as prayed herein, and directed to the said John D. Nagle, Commissioner of Immigration, at the Port of San Francisco in whose custody the said body of the said detained person is, as aforesaid, the said detained person will be deported from the United States of America to China without due process of law on the steamship "President Jackson" on or about the 24th day of October, 1930.

#### VII.

That said detained person is a citizen of the United States of America for the reasons hereinbefore alleged and as such is entitled to a judicial inquiry

by this court concerning his rights and claims for admission into the United States as aforesaid. [7]

WHEREFORE, your petitioner prays that a writ of habeas corpus be issued by this Honorable Court, directed to and commanding the said John D. Nagle, Commissioner of Immigration at the Port of San Francisco, to have and procure the body of said detained person before this Honorable Court at its courtroom in the City and County of San Francisco, State and Northern District of California, at the opening hour of said court, on a day certain in said order; that the said alleged cause of imprisonment, detention, confinement and restraint of said detained person, and the legality or illegality thereof may be inquired into, and in order that in case the said imprisonment, detention, confinement and restraint are unlawful and illegal that the said detained person may be discharged from all custody, detention, imprisonment, confinement and restraint.

Dated, October 21st, 1930.

RUSSELL P. TYLER,  
Attorney for Petitioner. [8]

United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

Lee Share Dew, being first duly sworn, deposes and says: That he is the petitioner in the foregoing petition and makes and verifies said petition for and on behalf of his lawful and legitimate son, Lee Get Nuey, for the reason that the said Lee Get Nuey is now restrained of his liberty as more particularly appears in the aforesaid petition and for the said





of habeas corpus should not issue as prayed for herein.

AND IT IS FURTHER ORDERED that pending the determination of this matter that the custody of the said Lee Get Nuey, the detained person, on whose behalf a writ of habeas corpus is made herein, shall not change, and that the said detained person shall not be removed from the Northern District of the State of California and the jurisdiction of this Court until the further order of this Court. [10]

This order is expressly made binding upon the said John D. Nagle, Esq., Commissioner of Immigration, and all other immigration officers and agents acting as such, within the said Northern District of California.

Dated October 23d, 1930.

HAROLD LOUDERBACK,  
Judge.

[Endorsed]: Filed October 23, 1930. [11]

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[Title of Court and Cause.]

#### APPEARANCE OF RESPONDENT.

Respondent hereby appears through the undersigned attorney and files herewith in answer to the order to show cause herein, the original certified record of the immigration proceedings relative to

Lee Get Nuey before the Bureau of Immigration and the Secretary of Labor.

GEO. J. HATFIELD,  
United States Attorney,  
Attorney for Respondent.

[Endorsed]: Filed March 9, 1931. [12]

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[Title of Court and Cause.]

### AMENDMENT TO PETITION.

Now comes Lee Share Dew, the petitioner in the above-entitled proceeding for a writ of habeas corpus for and on behalf of his son Lee Get Nuey, and amends his said petition for a writ of habeas corpus by adding thereto the following attached exhibits, to wit:

1. The summary of the Special Board of Inquiry at the Port of San Francisco had in the proceeding of the said detained person at said port, which summary is attached hereto, marked Exhibit "A," and made a part hereof and expressly made a part of the said petition for the writ of habeas corpus as if set forth therein.

2. The summary of the Board of Review, Bureau of Immigration, Department of Labor, Washington, D. C., had in the proceeding of the said detained person on appeal from the decision of the Special Board of Inquiry at the Port of San Francisco, which summary is attached hereto, marked Exhibit "B," and made a part hereof and expressly made a

part of the said petition for the writ of habeas corpus as if set forth therein.

RUSSELL P. TYLER,  
Attorney for Petitioner. [13]

EXHIBIT "A."

SUMMARY.

By CHAIRMAN:

This applicant, Lee Get Nuey, seeks admission as the natural son of Lee Share Dew, who was adjudged a native of this country in proceedings No. 5710 by the U. S. District Court, N. D. C., on October 4, 1888. The applicant is said to be 30 years old, Chinese reckoning, the date of his birth being given as KS. 27-10-29 (December 9, 1901). Thus according to the claims advanced, he is 28 years and 8 months of age, at the present time. The applicant appears to be a man at least 35 years old, American reckoning, but in view of the fact that he is and claims to be an adult, I believe it inadvisable to formally challenge him on the question of age. Lee Share Dew returned to China on what was said to be his second trip, on November 28, 1900, returning to this country on January 27, 1902, his presence in China at the essential time to render paternity of a child born December 9, 1901, is thus established. Upon his return he was not questioned as to his marital status. It appears Lee Share Dew did not again come to the attention of this Service until August 12, 1924, at which time he appeared at this Station as an applicant for Form 430. He then stated that he had been married once

in China, that his wife Fong Shee, was then living in the Gock Suëy Village S. N. D., China, and that he had one child, a son, for whom he then gave the same name and birth date as are now given for the present applicant. Lee Share Dew sailed from this port on September 2, 1924, and returned on December 16, 1925. Upon his return, he claimed his wife was still living, and that she had borne him another son, Lee Wah Foon, on August 23, 1925. He again claimed a son as the result of the previous trip mentioned, but gave for his son the name Lee Nuey Gat, and the birth date as KS. 28-10-29 (November 28, 1902). He has not since appeared before this Service until the present time.

The evidence submitted in this case consists of the testimony of the alleged father, the applicant, and an identifying witness, Lee Lin Sing, who, it is claimed, has knowledge of the relationship alleged to exist in this case, by reason of his making the acquaintance of the applicant and certain other members of the latter's family during a recent visit to China. While the statements of the witnesses do not contain a large number of serious disagreements, there developed a few discrepancies and inconsistencies of such a very material nature as to raise in the minds of the Board very serious doubts as to the existence of the relationship claimed, and as to leave no question concerning the falsity of at least a large portion of the testimony. This refers only to the statements of the two principals, the testimony, so far as it concerns the identifying witness, being in good agreement. Numerous features lead me to believe that the evidence in this



case is largely, if not completely manufactured expressly for use in the hearing before this service.

The applicant states that he has been married once, in CR. 8-10-15 (December 6, 1919), and there have been born to him and his wife three children a son Lee Lin Fat, born July 15, 1923, still living in China, a second son, Lee Tin Jin, born about the middle of the year 1924, who died in the 12th month of the same Chinese year, CR. 13 (January, 1925), and a daughter Lee Gew, born June 12, 1926, still living. He claims, (pg. 19) he cannot [14] remember the birth date of his 2nd son because he wishes to forget about him, but states that this child was born about the 6th month of CR. 13 (July 2 to 31, 1924). Testifying at this Station Aug. 12, 1924, at a time when he had not been in China for over 22 years, the alleged father, in reply to the question "Q. Is your son married?" stated "yes, to Wong Shee, CR. 7 (1918) 2 sons, 1 daughter." Note that this was nearly two years prior to the date now given for the birth of the applicant's only daughter. In the present case alleged father testified (pg. 5) the applicant has never had more than 2 children, a son, Lee Lin Fat, born in 1923 and a daughter Lee Gew, born in 1926. He also now agrees with the applicant regarding the time of the latter's marriage CR. 8-10-15 (Dec. 6, 1919). When confronted with his 1924 testimony that his son then had 3 children, 2 sons and 1 daughter, he is unable to give any explanations. Applicant testified that his father was at home in China at the time his 2nd son Lee Lin Jin, died, and that this child died in

the same house in which his father was then living. In this connection there should also be noted the testimony of both principals (pgs. 12 and 26) regarding the number of children the applicant had at the time the alleged father was last in China. Both first state that applicant had two children, a son and a daughter, at the time in question, the alleged father failing to note the contradiction until he started to describe the daughter.

There are many indications that the testimony regarding the Gock Suey Village, where the applicant is said to have lived all of his life, is fabricated. This village is said to contain 5 dwelling houses, 1 social hall and 5 toilet houses. Of the 4 families besides their own said to live in the village, two have no children whatever while the other two each have one son only. Both of the latter are described as being about the same age as the applicant, one still single, and the other, while married for several years, has never had any children. The principals are in disagreement concerning many details in their descriptions of the home village.

Alleged father testifies (pg. 9) the 5 toilets all touch one another and so indicates on his diagram (Exhibit "A"). The applicant states (pg. 23) there are spaces between each of the 5 toilets large enough for a person to pass through and he indicates on his diagram of the village (Exhibit "B") that each of the toilets is separated from the others by a small space.

Alleged father testified (pgs. 9 and 31) there are hedges of trees surrounding the village on both sides

and the back, with a bamboo hedge at the front. Applicant testifies (pg. 24) there is a bamboo hedge across the front of the village and some bamboos and trees mixed on the west side or tail, but no barriers of any kind on the back or on the east side.

The principals agree there is a gate on each side of their village which both state are enclosed by inserting upright wooden poles. Alleged father testified (pg. 10) there were no stone slabs beneath the gateways, the poles being held, at the bottom by means of heavy wooden beams. Applicant states (pg. 24) there have been slabs of stone beneath both gates as far back as he can remember, and that the poles are held in place at the bottom by being inserted in hole in these stones.

It is agreed there is but one well in the village. Alleged father testifies this well is located in front of the village at the [15] head and that the location of this well is indicated on his diagram of the village with approximate correctness. The applicant indicates on this diagram (Exhibit B) that the only well in his village is located at the east end or head of the village, slightly to the back of the east and west line of the houses. He testifies (pg. 24) that the well is neither toward the front or back of the village, but is just about in line with the houses. He states this is the only well that has ever been in his village to his knowledge.

The principals agree that Lee Share Dew's father is burried in the Ngow Hill, his mother at the Bong Hom Hill and his paternal grandparents in the Jee Yon Hill. Both claim to have visited these three



graves while the alleged father was last in China. The latter testified (pgs. 7, 8, and 31) that the Ngow Hill is located about 2 lis north, the Bong Hom Hill about 1 li west and the Jee Yon Hill about 1 li east of their village. The applicant testifies that the Ngow Hill is about 2 lis west, the Bong Hom Hill about 1 li west and the Jee Yon Hill about half of a li west of his village, and is positive in his statement that all three of these hills lie in the same direction from the village.

The alleged father testifies (pgs. 10 and 31) that *one* one neighboring village can be seen from Gock Suey Village. This, the Doo Nai Hong Village, he states is located a little over 1 li in front or to the north of his village. The applicant testified that the Doo Nai Hong Village is about half a li east of his village and that another village, occupied by Woo Family people, and situated about 3 lis to the south, can also be seen from his village. The alleged father, while he states there are 7 or 8 houses occupied by the Woo Family at the rear of his village, states these houses cannot be seen from his village.

The alleged father states the open court of his house has a brick floor while the applicant testifies the open court of his father's house has a tile floor. To be certain there was no misunderstanding concerning this feature both were asked to explain their conception of brick and tile and both make the same distinction. The alleged father testified (pg. 11) that there is a skylight in each kitchen of his house, both of which are covered with tiles. The applicant testifies (pg. 25) that the skylights in the kitchens of

his house are covered with boards, that he is certain these covers are made of wooden boards.

Alleged father states (pgs. 9 and 31) that the schoolhouse or social hall in his village contains 3 rooms, a bedroom, a kitchen and a parlor and that the bedroom and kitchen are both separated from the parlor by partitions. The applicant testified (pg. 24) the schoolhouse contains but 2 rooms, a parlor and a small room on the west side. He states there is no kitchen in this building, there being only a small portable stove kept in one corner of the parlor for cooking purposes.

The alleged father testifies (pg. 13) that when he was last in China he told applicant to go to the Fook Chong store in Som Gop Market to inquire for work. It is claimed that the applicant has been working at that store for the past four years. The applicant testifies that his father never suggested to him that he should go to work, that his father never told him he might find employment at the Fook Chong Store and that his father had no hand in his obtaining a position. [16]

Alleged father states while he was last in China he had his hair cut by barbers who came to his village. The applicant testified that his father had his hair cut at the Som Gop Market and that barbers never visited his village.

Alleged father testifies that Lee Ming Yin's widow shaved the head of his son Lee Wah Foon in the parlor of his house and that the applicant was present on that occasion (pg. 12). The applicant testifies (pg. 2) that the same woman shaved Lee

Wah Foon's head in the west side bedroom of their house, this being the only time that his head was shaved.

Alleged father testifies that he has received 2 letters written to him by the applicant, one acknowledging receipt of the affidavit and the other notifying him of the applicant's sailing from China. The applicant testifies that the only letter he ever wrote to this father was one he sent from Hongkong informing him that he was leaving for the U. S.

Alleged father testifies (pg. 15) that when he was last at home the applicant requested him to bring him to the U. S. and that he informed the applicant he would have to let the matter rest until he returned to this country. The applicant testified (pg. 28) that he has never requested his father to bring him to this country, that he has never at any time discussed with his father the subject of his coming to the U. S., nor had his father ever mentioned this subject to him.

The alleged father gives his mother's name as Ho Shee. The applicant states his paternal grandmother was named Hung Shee.

Because of the features noted, it is my opinion that the evidence submitted and adduced fails to *satisfactory* establish that the applicant is the natural son of Lee Share Dew, as claimed. No evidence has been submitted to indicate that the applicant is entitled to admission under other status than as the son of the native Lee Share Dew and I therefore move that he be denied admission to the U. S. on the ground that he is an alien who is with-

out status entitling him to such admission and on the further ground that the burden of proof has not been sustained as required by Sec. 23 of the Immigration Act of 1924.

By Member McNAMARRA.—I second the motion.

By Member OLIVER.—I concur. [17]

### EXHIBIT "B."

In re: Lee Get Nuey; Age 28.

This case comes before the Board of Review on appeal from a decision of a Board of Special Inquiry denying admission as the son of a native citizen of the United States. The citizenship of the alleged father being conceded, the question at issue is relationship.

Attorney C. E. BOOTH has filed a brief.

Attorney C. A. TRUMBLY at the port.

While the record shows that the alleged father was in China at a time to make the claimed relationship possible, he does not appear to have been questioned about his family prior to 1924 when he claimed a son "Gick Nuey" born in 1901. In 1925 he named his oldest son "Nuey Cat" and said that he was born in 1902. The applicant is now called "Get Nuey" and said to have been born in 1901. The record affords no explanation of such inconsistency in the alleged father's description of the son who this applicant claims to be.

The alleged father was last in China in 1925 and an alleged acquaintance who claims to have met the

applicant in China in 1928 appeared to testify. The testimony shows such discrepancies as the following:

While the alleged father describes and in a diagram indicates the village toilet houses are contiguous, the applicant describes and diagrams these structures as separated by a space wide enough for a person to pass between. Whereas the alleged father says the bases of the gateways consist of wooden beams, the applicant says that they have always consisted of stone slabs. While the alleged father places the village well at the front of the village, the applicant locates it midway between the front and the back. Whereas the alleged father testifies that when he was last at home he told the applicant to look for work at the store where the applicant is said to have been later employed and that being asked by the applicant to bring him to the United States they discussed the matter at that time, the applicant declares that he was not told by his father to look for work at the said store and that the matter of his coming to the United States was not mentioned when his father was last at home. While the alleged father says that when he was last at home he had his hair cut by barbers who came to his village, the applicant says that barbers never came to his village and that his father when last in China had his hair cut in the Som Gop market.

However the outstanding adverse feature of this case is not in the present testimonial discrepancies which alone might not be sufficiently serious to compel an excluding decision. The outstanding feature is the fact that on August 12, 1924, at a time when, according to the present testimony of the applicant,



he had only one son of whose birth his alleged father could have been advised, the alleged father stated under oath at San Francisco that his son who this applicant claims to be had two sons and one daughter. The applicant testifies that his second son was not born until just about the time that his alleged father made the said statement and that his daughter was not born until 1926, two years later. The attorney, attempting to maintain a theory that the 1924 statement may have been erroneously set down, says that it was taken without the aid of a Chinese interpreter. But the statement not only bears the signature of the alleged father but also that of the Chinese interpreter who [18] officiated at its taking. The alleged father merely says that he cannot remember making such a statement and "If I did, that was incorrect." In view of the fact that in August, 1924, the Chin Bow decision not having yet been rendered, the impression was abroad that children of a native's son who had not yet established residence in the United States were eligible for admission as citizens, there was a motive for the alleged father's making the fraudulent claim that his son who had not yet come to the United States had a family in China. The record shows that in claiming that his alleged son had three children two years before one of them was born (according to the present testimony) the alleged father did make such a fraudulent claim. Moreover, while the applicant now testifies that he had two sons, one of whom died while his father was at home in China, the alleged father now says that his son whom applicant claims to be never had more than one son.

Considering this record which at least utterly discredits the alleged father, as well as the discrepancies in the present testimony, together with the inconsistencies in the alleged father's mentioning of his son who the applicant claims to be, and finding no slightest ground for the attorney's claim that the resemblance between the applicant and his alleged father, the Board of Review is compelled to conclude that this applicant's claim has not by the evidence been reasonably established.

It is therefore recommended that the appeal be dismissed.

[Endorsed]: Receipt of a copy of the within acknowledged this 20th day of March, 1931.

GEO. J. HATFIELD,  
U. S. Attorney.

Filed March 20, 1931. [19]

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[Title of Court and Cause.]

ORDER DENYING PETITION FOR WRIT,  
ETC.

This matter having been heard on the application for a writ of habeas corpus (by order to show cause), and having been argued and submitted,—

IT IS ORDERED, after a full consideration, that the application for a writ of habeas corpus be, and the same is hereby DENIED; that the petition be, and the same is hereby DISMISSED; that the order to show cause be, and the same is hereby DISCHARGED; and that the applicant be deported by

the United States Immigration Authorities at San Francisco, California.

Dated: May 25, 1931.

A. F. ST. SURE,  
U. S. District Judge.

[Endorsed]: Filed May 25, 1931. [20]

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[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the Above-entitled Court, to JOHN D. NAGLE, Commissioner of Immigration, and to GEORGE J. HATFIELD, Esq., United States Attorney, His Attorney:

You and each of you will please take notice that Lee Get Nuey, the person in whose behalf the petition was filed in the above-entitled matter, hereby appeals to the United States Circuit Court of Appeals, for the Ninth Circuit, from the order and judgment rendered, made and entered on the 25th day of May, 1931, denying the amended petition for a writ of habeas corpus filed herein.

RUSSELL P. TYLER,  
Attorney for Appellant.

[Endorsed]: Receipt of a copy of the within acknowledged this 26th day of May, 1931.

GEO. J. HATFIELD,  
U. S. Attorney.

Filed May 26, 1931. [21]



[Title of Court and Cause.]

PETITION FOR APPEAL.

Now comes Lee Get Nuey, the person in whose behalf the amended petition for a writ of habeas corpus was filed in the above-entitled matter, and respectfully shows:

That on the 25th day of May, 1931, the above-entitled court made and entered its order denying the amended petition for a writ of habeas corpus, as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

WHEREFORE, the appellant prays that an appeal be granted in his behalf to the Circuit Court of Appeals for the United States, for the Ninth Circuit thereof, for the correction of errors as complained of, and further, that a transcript of the record, proceedings and papers in the above-entitled court, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals, for the Ninth Circuit thereof, and further, that said appellant be held within the jurisdiction of this court during the pendency of the [22] appeal herein, so that he may be produced in execution of whatever judgment may be finally entered herein.

Dated, San Francisco, California, this 26 day of May, 1931.

RUSSELL P. TYLER,  
Attorney for Appellant.

[Endorsed]: Receipt of a copy of the within acknowledged this 26th day of May, 1931.

GEO. J. HATFIELD,  
U. S. Attorney.

Filed May 26, 1931. [23]

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[Title of Court and Cause.]

#### ASSIGNMENT OF ERRORS.

Now comes Lee Get Nuey, the person in whose behalf said amended petition for a writ of habeas corpus was filed in the above-entitled proceeding through his attorney, Russell P. Tyler, Esq., and sets forth the errors he claims the above-entitled court committed in denying his amended petition for a writ of habeas corpus, as follows:

##### I.

That said Court erred in not granting the writ of habeas corpus and discharging the said detained Lee Get Nuey from the custody and control of John D. Nagle, Commissioner of Immigration at the Port of San Francisco.

##### II.

That the Court erred in not holding that it had jurisdiction to issue the writ of habeas corpus in the above-entitled cause, as prayed for in the

amended petition on file herein on behalf of the said Lee Get Nuey for a writ of habeas corpus.

III.

That the Court erred in not holding that the allegations [24] set forth in the petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of a writ of habeas corpus.

IV.

That the Court erred in not holding that the said Lee Get Nuey was or is unlawfully imprisoned, detained, confined and restrained of his liberty by the said John D. Nagle, Commissioner of Immigration at the Port of San Francisco.

V.

That the Court erred in not holding that there was an abuse of discretion on the part of the immigration officials in denying the said Lee Get Nuey the right to enter the United States as the lawful legitimate son of Lee Share Dew, a recognized and admitted citizen of the United States of America.

VI.

That the Court erred in not holding that it was an abuse of discretion on the part of the immigration officials in denying the said Lee Get Nuey the right to enter the United States as the recognized and accepted son of Lee Share Dew, a recognized and admitted citizen of the United States of America.

VII.

That the Court erred in not holding that the evidence produced at the trial *de novo* granted in the

above-entitled proceeding was sufficient to establish that the said detained Lee Get Nuey was a citizen of the United States of America as the lawful legitimate son of Lee Get Nuey, an admitted and recognized citizen of the United States of America.

#### VIII.

That the Court erred in holding that the evidence produced at the trial *de novo* granted in the above-entitled proceeding was not sufficient to establish that said detained Lee Get Nuey was a citizen of the United States of America as the recognized [25] and accepted son of Lee Share Dew, an admitted and recognized citizen of the United States of America.

#### IX.

That the Court erred in not holding that the evidence produced at the said trial *de novo* was sufficient in law to justify the granting and issuing of a writ of habeas corpus.

#### X.

That the Court erred in not holding that the hearing or hearings accorded to the said Lee Get Nuey by the said immigration officials was or were unfair.

#### XI.

That the Court erred in not holding that the evidence produced on behalf of the said Lee Get Nuey at the said trial *de novo* was sufficient upon which to predicate the issuance of a writ of habeas corpus.

WHEREFORE, appellant prays that said order and judgment of the United States District Court for the Northern District of California, made, given

and entered therein in the office of the Clerk of said court on the 25th day of May, 1931, denying the petition for a writ of habeas corpus be reversed and that the said Lee Get Nuey be restored to his liberty and go hence without delay.

RUSSELL P. TYLER,  
Attorney for Appellant.

[Endorsed]: Receipt of a copy of the within acknowledged this 26th day of May, 1931.

GEO. J. HATFIELD,  
U. S. Attorney.

Filed May 26, 1931. [26]

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[Title of Court and Cause.]

### ORDER ALLOWING APPEAL.

It appearing to the above-entitled court that Lee Get Nuey, the person in whose behalf the amended petition herein was filed, has this day filed and presented to the above-entitled court his petition praying for an order of this Court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of said Court denying a writ of habeas corpus and dismissing his amended petition for said writ, and good cause appearing therefor,—

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled court make and prepare a transcript of all papers, proceedings and records in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit, within the time allowed by law; and

IT IS HEREBY FURTHER ORDERED that execution of the warrant of deportation of said Lee Get Nuey be and the same is hereby stayed pending this appeal and that the said Lee Get Nuey [27] be not removed from the jurisdiction of this court pending this appeal and that his present custody and control remain undisturbed pending this appeal.

Dated, San Francisco, California, this 26 day of May, 1931.

A. F. ST. SURE,  
Judge of the District Court.

[Endorsed]: Receipt of a copy of the within acknowledged this 26th day of May, 1931.

GEO. J. HATFIELD,  
U. S. Attorney.

Filed May 26, 1931. [28]

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[Title of Court and Cause.]

ORDER RESPECTING WITHDRAWAL OF  
IMMIGRATION RECORD.

Upon reading the order allowing the appeal on file in the above-entitled matter and upon motion of



Russell P. Tyler, Esq., attorney for the appellant, and good cause appearing therefor,—

IT IS HEREBY ORDERED that the immigration record on file in the above-entitled matter and all exhibits introduced into the evidence during the trial *de novo* of said matter before the above-entitled court be withdrawn from the office of the Clerk of this court and transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and there to be considered as part and parcel of the record on appeal. Said withdrawal and transmittal to be made at the time the record on appeal is certified to the United States Circuit Court for the Ninth Circuit, by the Clerk of this court.

Dated, San Francisco, California, this 26th day of May, 1931.

A. F. ST. SURE,  
United States District Judge. [29]

[Endorsed]: Receipt of a copy of the within acknowledged this 26th day of May, 1931.

GEO. J. HATFIELD,  
U. S. Attorney.

Filed May 26, 1931. [30]

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[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please issue:

1. Petition for writ of habeas corpus.

2. Order to show cause.
3. Appearance of respondent.
4. Amendment to petition.
5. Order denying application, ordering detained deported, etc.
6. Assignment of errors.
7. Order allowing appeal.
8. Order respecting withdrawal of immigration record.
9. Notice of appeal.
10. Citation on appeal.
11. Petition for appeal.
12. Praecipe.

RUSSELL P. TYLER,  
Attorney for Applicant.

[Endorsed]: Filed Jul. 21, 1931. [31]

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[Title of Court.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 31 pages, numbered from 1 to 31, inclusive, contain a full, true, and correct transcript of the records and proceedings in the Matter of Lee Get Nuey, on Habeas Corpus, No. 20,397-S., as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on ap-



peal is the sum of Ten Dollars and Seventy-five Cents (\$10.75), and that the said amount has been paid to me by the attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 24th day of July, A. D. 1931.

[Seal]

WALTER B. MALING,  
Clerk.

By C. M. Taylor,  
Deputy Clerk. [32]

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[Title of Court and Cause.]

#### CITATION ON APPEAL.

United States of America,—ss.

The President of the United States of America to  
JOHN D. NAGLE, Commissioner of Immigration  
at the Port of San Francisco, and  
GEORGE J. HATFIELD, Esq., United States  
Attorney, GREETING:

YOU AND EACH OF YOU ARE HEREBY  
CITED AND ADMONISHED to be and appear at  
a United States Circuit Court of Appeals for the  
Ninth Circuit, to be holden at the City and County of  
San Francisco, in the State of California, within  
thirty (30) days from the date hereof, pursuant to an  
order allowing an appeal of record in the Clerk's  
office of the United States District Court, for the  
Northern District of California, wherein Lee Get  
Nuey is appellant and you are appellee, to show  
cause, if any there be, why the decree rendered

against the said appellant as in the said order allowing the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Hon. A. F. ST. SURE, United States District Judge of the Southern Division of the Northern District of California, this 26th day of May, 1931.

A. F. ST. SURE,  
United States District Judge. [33]

Receipt of a copy of the within acknowledged this 26th day of May, 1931.

GEO. J. HATFIELD,  
U. S. Attorney.

[Endorsed]: Filed May 26, 1931, 2:22 P. M.  
[34]

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[Endorsed]: No. 6536. United States Circuit Court of Appeals for the Ninth Circuit. Lee Get Nuey, Appellant, vs. John D. Nagle, Commissioner of Immigration for the Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed July 24, 1931.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Charles J. Barry,  
Deputy Clerk.